

20.2.05

20a (ואם נהנית משלמת וכי) → 21b (איכא בנייהו)

1. נשאר בעיר שמה ושאיה יבת שער ישעיה כד, יב
 2. כי יבקר איש שדה או כרם ושלח את בעירו ובקר בשדה אחר מיטב שדהו ומיטב כרמו ושלם: שמות פרק כב פסוק ד

- I Analysis of 3rd clause – in any case, payment for הנהא is due
- a Measure of payment (example: if it ate barley)
- i בריתא: value of straw (or whatever he would normally feed that animal) (supporting רבה)
- ii רבא: value of barley at cheapest market rate (supporting בריתא → if it ate something bad for it – exempt)
- b “backdoor” discussion re: זה נהנה וזה לא חסר
- i question: if someone lives in another’s courtyard without his knowledge – does he have to pay rent?
- 1 Circumstance: must be a courtyard that wasn’t otherwise for rent, but the tenant was someone who would otherwise pay rent (else it is either זה לא נהנה וזה לא חסר or זה נהנה וזה חסר)
- 2 תשובה: the answer is found in our משנה – the הנהא must pay for its מזיק
- (a) Challenge: disanalagous – in this case, זה חסר (the food)
- (b) דב”ח: if someone leaves his food in רה”ר, the assumption is that he was מפקיר → זה לא חסר
- ii further attempts to solve זה נהנה וזה לא חסר
- 1 (אג: ב”ב אג) – if A surrounds B’s field on 3 sides and he fences around, we don’t obligate B to contribute
- (a) → if it was all 4 sides, we would obligate B to contribute → זה לא חסר חייב
- (b) Rejection: A can claim that B’s presence forced him to add a layer of fencing (זה חסר)
- 2 Related בריתא: if B put in fence #4 on his own, we force him to contribute towards the first three
- (a) → if he didn’t initiate, we don’t force him → זה נהנה וזה לא חסר פטור
- (b) Rejection: B may claim that he didn’t need that much of a fence
- 3 Ruling: if a house and loft were owned by 2 and the building collapsed, & house-owner refuses to build, the loft-owner may build and remain there until the house-owner pays him for his expenses (in totum) → פטור
- (a) Rejection: the house-owner has to bear the brunt of the loft (and can’t subtract rent)
- 4 ר’ יהודה: בריתא (in re: our question of living in someone’s yard) must pay rent → חייב
- (a) Rejection: in that case, the homeowner loses due to the blackening of his walls
- iii Revisiting ruling in re: 2 rulings in יוחנן’s name
- 1 ד’ כהנא doesn’t need to pay rent
- 2 ד’ אבהו must pay rent
- (a) ד’ אבהו’s ruling was inferred (erroneously) from ד’ כהנא’s reaction to his application of ד’ פפא’s ruling in re: using building materials of הקדש (considered מעילה after living there ש”פ’s worth of time)
- (i) Rejection: ד’ אבהו’s silence was due to his ignoring ד’ כהנא – since ד’ אבהו מודעת הקדש = שלא מודעת הקדש – פטור – if it was going to be rented – must pay; if not – פטור
- iv series of (apparently) contradictory rulings בשם ר’ הונא resolution – if it was going to be rented – must pay; if not – פטור
- v following v.1 – in our case, no rent is paid (the owner gains by having a tenant)
- vi case: ר”נ forced people who built a house on ר”נ’s property to give it to them –
- 1 reason: others had occupied the area and paid rent, the new owners refused to pay rent → ר”נ ordered seizure
- II reassessing final clause of משנה: מה שנהנית/מה שהזיקה
- a if: the food was in the middle of the plaza – pays the הנהא
- i but if: it was off to the side, it pays what it damaged (½ or full, as per תם/מועד)
- 1 דב: even if the animal is in רה”ר and leans over to eat – pays full
- 2 צדי רה”ר: still only pays per הנהא; full payment only if the animal went over to the רה”ר
- 3 Alternatively: all agree that מחזרת pays full; dispute if ניק set aside some property for רב – רב (פטור); רב – רב (חייב) שמואל; רב – רב (פטור)
- (a) Follows dispute if בור ברשות הניק which he was then מפקיר carries liability
- (b) Rejection: all agree that בעל הבור פטור; here, רב argues בעל הפירות בעל השור brought him too close
- (c) Or: all agree that בעל הבור חייב; here, שמואל argues בעל השור claims that בעל פירות left his fruit out
- b Suggestion: מחזרת may be מחלוקת תנאים – ר”מ contra ר”מ if ר”מ is eating while walking → full (or only שנהנית)
- i Rejection: all hold (like רב or שמואל) – this dispute is whether to accept אילפא (about animal reaching over and eating from another animal’s pack as per above)